

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

251

CWP-9620-2022
Date of decision:18.10.2023

TEJA SINGH @ GURTEJ SINGH

.....Petitioner

VERSUS

UNION OF INDIA AND OTHERS

.....Respondents

CORAM : HON'BLE MR. JUSTICE VINOD S. BHARDWAJ

Present: - Ms. Shaveta Sanghi, Advocate
for the petitioner.

Mr. Rajiv Sharma, Advocate
for respondents No.1 to 3.

Mr. Vivek Chauhan, Addl. A.G. Haryana
for respondent No.4.

VINOD S. BHARDWAJ, J. (Oral)

1. Challenge in the present writ petition is to the order dated 28.03.2016 (Annexure P-2) passed by respondent No.3 and a further directions has been sought for seeking release of the property of the petitioner from forfeiture in lieu of the acquittal of the petitioner in FIR No. 54 dated 04.03.2000 vide judgment dated 20.11.2012 which was attained finality.

2. The petitioner claims that he had been falsely implicated in the above said FIR No. 54 dated 04.03.2000 registered under Section 15 and 16

of the NDPS Act on the basis of a secret information received by the Station House Officer alleging therein that some persons were bringing huge quantity of poppy straw to the house of the accused Atma Singh situated in Village Jhiri. On receipt of such information, the police party reached Village Jhiri where they stopped a truck bearing registration No. RJ-14G-1030 coming towards the house of accused Atma Singh. 4/5 persons are stated to have jumped out of the truck and ran away on seeing the police party. 03 persons were identified as Atma Singh, Baldev Singh and Banhu, however, two persons could not be identified. The petitioner is amongst one of the two unidentified persons who was implicated on the disclosure made by a co-accused. Having faced the trial, the petitioner was convicted vide judgment dated 15.11.2002 passed by the Additional Sessions Judge, Sirsa and sentence to undergo rigorous imprisonment for a period of 10 years alongwith fine of Rs. 1,00,000/-.

3. Aggrieved thereof, the petitioner preferred Criminal Appeal No. 2030-SB-2003. During the pendency of the aforesaid appeal, the Station House Officer traced and unidentified certain properties acquired by the petitioner and passed a order No. 127-5A under Section 68F (1) of the NDPS Act, 1985 on 04.04.2008 freezing the identified properties of the petitioner. The details of the properties are as under:

- “a. House of Teja Singh at Rori Tehsil Dabwali District Sirsa with value of Rs. 9 Lakh*
- b. Land measuring 9 Acres, 1 Kanal & 14 Marlas at Village Rori, Sirsa, Haryana with value of Rs. 46 Lakh.*
- c. Tractor HR-19-3646 with value of Rs. 1 Lakh*
- d. Live stock (Mares) with value of Rs. 1.5 Lakhs.”*

4. The above said freezing order was confirmed by the competent authority and Administrator vide order dated 02.05.2008 bearing No. CA/DL (HR)/NDPS/01/08/298 to 306. The appeal preferred by the petitioner against the freezing order was also dismissed by the Appellate Tribunal for forfeited property in New Delhi vide order dated 11.08.2009. The appeal of the petitioner came up for hearing and vide judgment dated 20.11.2012, the petitioner was acquitted of all the charges. The said judgment is stated to have attained finality. Subsequently, vide impugned order dated 28.03.2016, reasons to believe were recorded by the competent authority and Administrator, SAFEM (FOP) A & NDPSA, Delhi for issuance of Show Cause Notice under Section 68H. The source of income, earnings or assets out of which or by means of which the petitioner acquired or possessed or has interest in the aforesaid property alongwith the evidence was mentioned in the Show Cause Notice. A response/representation against the said Show Cause Notice was submitted by the petitioner on 02.02.2022 pointing out that the petitioner already stand acquitted by the trial Court of the charges leveled against him and prayer was made for release of the seized/frozen property as per the provisions of Section 68 Z (2) of the NDPS Act. No response thereto was however filed. It is further referred that as per provisions of Section 68 (C) of the NDPS Act, a property which is acquired by a person within 06 years from the date when the person is charge under the Act could be forfeited. It was also averred that the property in question which has been freezed by the respondents was acquired much before the petitioner was charged with the said offences.

5. Reply by way of an affidavit of Yad Ram, Deputy Superintendent of Police, Kalanwali on behalf of respondent No.4 was filed

wherein it was reiterated that the petitioner was involved in recovery of heavy contraband of 3600 kg of poppy husk and that one more FIR No. 176 dated 10.07.1978 had been registered under Section 61 of the Excise Act on account of recovery of 67 ¼ bottles of illicit liquor effected from possession of the petitioner. It was also averred that the petitioner was found to be covered under the provisions of Section 68-A (2)(a) of the NDPS Act and found to have acquired the properties out of the illegal trafficking of drugs/contrabands. Hence, the proceedings under Section 68(E) was initiated and a freezing order had been passed under Section 68 (f) (1) of the NDPS Act. After observing that the source of income was not commensurate with the investment. The rest of the facts as regards confirmation of the said order has also dismissed the appeal filed by the petitioner were reiterated in the said reply. It was not disputed that the petitioner stood acquitted in the above said FIR, however, it was held that since these order of acquittal passed in the circumstances of the case, hence, it is not an honourable acquittal.

6. A separate reply on behalf of respondent No.3 was also filed, in which the factual aspect referred to above is not disputed. It is, however, submitted that the respondent authorities had sought comments from the Station House Officer, Police Station Bara Gudha, District Sirsa to intimate as to whether any appeal has been preferred by the State against the order of acquittal or not. The objections and suggestions if any, were also sought. Vide letter dated 22.08.2016, the Station House Officer inter alia respondent as under:

"3. The case which was registered against Teja Singh in Police Station Baragudha, in that case, Teja Singh was found to have been acquitted by the Hon'ble Punjab and

Haryana High Court on 20.12.2012 and now Teja Singh has not filed any appeal before any other in respect of the above case.

4. Teja Singh orally told that he has not filed any appeal before the National Human Rights Commission, Delhi.

5. No appeal is pending with the police department.

Hence, it is requested that while taking into consideration the above facts relating to Teja Singh, the action may kindly be taken as per existing position. The report is hereby submitted."

7. The said aspect was further reiterated vide communicated dated 29.01.2017 informing about no appeal having been filed against acquittal of the petitioner. During the course of further communication *inter se* between the respondent No.3 and the Station House Officer, a communication was sent vide letter dated 23.06.2022 and 15.07.2022 intimated the following

"(2) The property of Shri Teja Singh, S/o: Shri Gurtej Singh has not been release because a history sheet has opened against Teja Singh as on PF. No. 21 in Police Station Rori, District: Sirsa. According to records, the following FIR has been registered against Shri Teja Singh is as under:

(a) FIR No: 54 dated 04.07.2000 u/s 15/16/61 of the NDPS Act, 1985 in Police Station: Baragudha, District: Sirsa.

(b) FIR No: 90 dated 01.09.2005 u/s 15/16/61 of the NDPS Act, 1985 in Police Station: Rori, District:/ Sirsa.

(c) FIR No: 40 dated 26.03.2010 u/s 13/3/67 G.Act in Police Station: Rori, District: Sirsa.

If the property of Teja Singh has been released then Teja Singh will again do illegal work, so the property of Teja Singh should not been released."

8. Hence, an apprehension was expressed by the respondents that as there were 03 cases registered against the petitioner, there is every possibility that he shall indulge in illegal work. Hence, the property of the petitioner ought not to be released.

9. Learned counsel appearing on behalf of the petitioner submits that only case FIR No. 54 had been registered against the petitioner wherein he has already been acquitted and insofar as FIR No. 90 and FIR No. 40 are concerned, they do not relate to the petitioner. She further submits that as a matter of fact, in the reply filed by the respondent-State of Haryana, there is no reference of the other cases i.e. FIR No. 90 and 40 and there is reference to only the instant FIR No. 54 and FIR No.176 that was registered on 10.07.1978 under the Excise Act. She further submits that insofar as FIR No. 90 registered at Police Station Rori, District Sirsa dated 1.9.2005 is concerned, the same does not exist on the E-Court website and in as far as FIR No. 40 is concerned, the same is under the Gambling Act and no final report has been filed thereunder. The names reflected in the said FIR are against Harbans Lal and Lakhwinder Singh and has no connect with the petitioner herein. She further places reliance on the judgment of Division Bench of this Court in ***LPA No. 569 of 2015*** decided on 20.04.2015 titled ***“Union of India and another versus Gurmail Singh and others”*** wherein it was held by the Division Bench that once the person is acquitted by the NDPS Court, there is no justification in continuing with the seizure of the property of an accused. The view adopted by the learned Single Judge was thus affirmed.

10. Counsel for the respondent-State is not in a position to controvert the said facts and pleads ignorance. However, it seems so far as the question of applicability of the judgment of the Hon'ble Division Bench in ***LPA No. 569 of 2015*** is concerned, the same is not disputed.

11. I have heard learned counsel appearing on behalf of the respective parties and have gone through the documents available on record.

12. Section 68 (E) of the NDPS Act, 1985 empowers an officer incharge to hold any illegal acquired property after recording reasons for doing so and take all such necessary steps for tracing and identifying such property. Further, Section 68 (F) empowers seizure and freezing of any illegally acquired property. The same empowers an officer conducting an enquiry or investigation under Section 68 A of the NDPS Act. To make an order of seizing such property or to pass such other orders restraining transfer thereof with the permission of the competent authority. The said permission was duly granted by the competent authority. Section 68 (Z) of the NDPS Act deals with the release of the property in certain cases. The relevant provision as extracted as under:

“68Z. Release of property in certain cases:-

1. *Where the detention order of a detenu is set aside or withdrawn, properties seized or frozen under this Chapter shall stand released.*
2. *Where any person referred to in clause (a) or clause (b) or clause (cc) of sub-section (2) of section 68A has been acquitted or discharged from the charges under this Act or any other corresponding law of any other country and the acquittal was not appealed against or when appealed against, the appeal was disposed of as a consequence of which such property could not be forfeited or warrant of*

arrest or authorisation of arrest issued against such person has been withdrawn, then, property seized or frozen under this Chapter shall stand released.”

13. A perusal of the above mentioned section shows that as per Section 68 Z (2) that where a person has been acquitted or discharge from the charges under this Act or any other corresponding law and the order of acquittal has become final, the property seized or frozen under this chapter shall stand released.

14. It is further evident that after the order of acquittal having been passed and attained finality, the respondents, instead of taking recourse to the provisions under Section 68 Z (2) initiated proceedings under Section 68 (H) of the NDPS Act, 1985 and issued Show Cause Notice and also directed that the petitioner shall be debarred from transferring any property mentioned in the Schedule 2 of the said notice in terms of Section 68-M of the NDPS Act, 1985. It is evident from a perusal of Section 68 (H) that the competent authority must record reasons to believe that all or any such properties are illegally acquired properties and serve a notice calling upon him to indicate the sources of his income, earning or assets out of which or by means of which he has acquired such property. Thereafter, the forfeiture order has to be passed in terms of Section 68-I, however, it is not the case of the respondents that any order under Section 68-I of the NDPS Act has been passed. Hence, its only a show cause notice under Section 68-H for forfeiture that had been issued.

15. Be that as it may, it is evident that no final order under Section 68-I of the NDPS Act, 1985 has been passed by the competent authority so far. Hence, the contentions raised by the petitioner for seeking release of the property under Section 68-Z cannot be considered at this stage. The

respondent No.3 shall pass an appropriate orders in terms of the proceedings initiated under Section 68-H of the NDPS Act, 1985 after granting an opportunity of hearing to the petitioner herein, in a time bound manner and preferably within a period of 04 months of a receipt of certified copy of this order.

The present petition is disposed of.

OCTOBER 18, 2023

Vishal Sharma

(VINOD S. BHARDWAJ)
JUDGE

Whether speaking/reasoned	:	Yes/No
Whether Reportable	:	Yes/No